

Heenan, J
ORIGINAL

DAVID N. KELLEY
United States Attorney
Southern District of New York
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	<u>CONSENT DECREE</u>
Plaintiff,	:	
	:	05 Civ. 7712 (JGK)
- against -	:	
LIVIU BRUNO SAIMOVICI, M.D.	:	
d/b/a ADVANCED EYE CARE ASSOCIATES,	:	
and AECA MEDICAL, PLLC,	:	ECF CASE
	:	
Defendants.	:	
- - - - -	:	-x

WHEREAS, Plaintiff United States of America (the "Government") commenced this action to enforce Title III of the Americans with Disabilities Act of 1990 ("ADA") against defendants Liviu Bruno Saimovici, M.D., doing business as Advanced Eye Care Associates, and AECA Medical, PLLC (collectively, "Defendants"); and

WHEREAS, the Government's complaint alleged that Defendants violated Title III of the ADA, 42 U.S.C. §§ 12181-89, and the Department of Justice's implementing regulation, 28 C.F.R. Pt. 36, as set forth in the complaint; and

WHEREAS, the commencement of this action by the United States follows an investigation by the United States Department of Justice into a complaint filed by Mr. Michael Russo, an individual with a hearing impairment, who had alleged that Defendants refused

to pay for a qualified sign language interpreter and subsequently cancelled an appointment with Russo because Russo is hearing impaired; and

WHEREAS, the ADA and its implementing regulations require that public accommodations "furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities." 28 C.F.R. 36.303(c); 42 U.S.C. 12182(b)(2)(A)(iii); and

WHEREAS, auxiliary aids and services include, among other things, qualified interpreters, note takers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDDs), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments. 28 C.F.R. § 36.303(b)(1); and

WHEREAS, the Defendants deny the Government's allegations and Russo's allegations, and have consented to the entry of this Consent Decree without trial or adjudication of any issues of fact or law and without this Consent Decree constituting an admission by Defendants with respect to any such issues; and

WHEREAS, the United States and Defendants agree that settlement of these matters without further litigation is in the public interest and that the entry of this Consent Decree is the most appropriate means of resolving these matters;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 42 U.S.C. §§ 12188(b)(1)(B) and 42 U.S.C. §§ 1331 and 1345.

2. Venue for this action lies in this judicial district pursuant to 28 U.S.C. § 1391 because Defendants reside in this judicial district and the events and omissions giving rise to the Government's claims occurred in this judicial district.

APPLICATION AND PARTIES BOUND

3. Defendant AECA Medical, PLLC operates a "professional office of a health care provider." 42 U.S.C. § 12181(7)(F). Defendant Saimovici owns and operates AECA Medical, LLP. 42 U.S.C. § 12181(7), 12182(a).

4. This Consent Decree applies to, and is binding upon, the Government and the Defendants. This Consent Decree also applies to and binds the successors-in-interest and assigns of Defendants, and Defendants shall have a duty to notify any successors-in-interest and assigns of this Consent Decree. The undersigned representatives of Defendants certify that they are authorized by Defendants to enter into and consent to the terms and conditions of the Consent Decree and to execute and legally bind Defendants to it.

GENERAL INJUNCTIVE RELIEF

5. Defendants shall not discriminate against any individual on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of Advanced Eye Care Associates or Dr. Saimovici.

POLICIES, PRACTICES, AND PROCEDURES

6. Within six months after the date of entry of this Consent Decree, Defendants shall develop a written policy for providing their services to individuals with disabilities, including but not limited to individuals with hearing impairments. Defendants' policy shall be consistent with the requirements of Title III of the ADA and include all of the obligations set forth in paragraphs 7 through 12 of this Consent Decree. The Defendants shall implement and enforce their policy and shall make their policy known to all of its employees and patients.

7. Defendants shall provide patients and prospective patients with such auxiliary aids and services as necessary to ensure effective communication with individuals with disabilities, unless to do so would pose an undue burden. 28 C.F.R. § 36.303(c); 42 U.S.C. § 12182(b)(2)(A)(iii); 28 C.F.R. 36.104.

8. Defendants shall compile, maintain, and update (as necessary) a list of qualified sign language interpreters and agencies providing interpreter services for the purpose of fulfilling a request for interpreter services.

9. When a patient, a prospective patient, or companion of such patient or prospective patient, requests that Defendants provide a sign language interpreter, Defendants shall provide a qualified interpreter without charge to the requestor. Defendants shall not require a family member or other associate of the patient or prospective patient to provide interpreter services.

10. Defendants shall provide an interpreter upon 48-hours notice of a scheduled appointment. In cases where an individual requests an interpreter for an appointment with less than 48-hours notice, Defendants shall use their best efforts to secure interpreting services within the time available.

11. If Defendants refuse or decline a request to provide a qualified interpreter, they shall provide the requester, at the time of the request, with a written explanation of the reasons for refusing the request. Defendants shall maintain a copy of all such written explanations.

12. If the reason for the refusal is Dr. Saimovici's belief that an interpreter was not necessary for effective communication during an appointment, the explanation shall include a description of the type of communication that generally takes place in a comparable appointment with a person who does not have a hearing impairment and an explanation of the reasons why no interpreter would be necessary to make the type of communication effective with a person with a hearing impairment. If the reason for the refusal is Dr. Saimovici's belief that to provide an interpreter would pose an undue burden, the explanation shall

include the hourly cost of providing such an interpreter, the projected cost to hire an interpreter for the appointment, and a statement of the gross and net receipts earned by Defendants during the past year. For any claim of an undue burden, Defendants shall measure the cost of the interpreter against the overall financial resources of his practice, rather than the income generated from the requestor's individual office visit.

NOTICE TO THE PUBLIC

13. Within 60 days after the date of entry of this Consent Decree, Defendants shall post in a conspicuous location within the offices of Advanced Eye Care Associates, located at 750 Park Avenue, New York, New York, a sign stating as follows: "In compliance with the Americans With Disabilities Act, Advanced Eye Care Associates and Dr. Saimovici will provide sign language interpreters, or other auxiliary aids or services, when they are necessary for effective communication with patients, prospective patients, and with their companions that need to be involved in the medical treatment."

RECORD KEEPING

14. Defendants shall keep and preserve records of all requests, whether oral or written, for sign language interpreters or other auxiliary aids or services.

15. Defendants shall keep and preserve records of all complaints, whether oral or written, alleging discrimination on the basis of disability by Defendants. Defendants shall provide counsel for the Government with written notice of the receipt of

any such complaint, and shall provide a copy of all such written complaints to counsel for the Government within thirty days after receipt of such complaint by Defendants.

CIVIL PENALTIES AND DAMAGES

16. Defendants shall pay a total of three thousand five hundred dollars (\$3,500.00) in full and final settlement and satisfaction of any and all claims asserted by the United States in this action, pursuant to 42 U.S.C. § 12188(b)(2)(C), for civil penalties. Payment of this amount shall be made within sixty days after the date of entry of this Consent Decree by check payable to the "United States Department of Justice" and delivered to the United States Attorney's Office for the Southern District of York, 86 Chambers Street, 3rd Floor, New York, New York, 10007.

17. Defendants shall pay, in addition to the amount specified in the previous paragraph, a total of one thousand five hundred dollars (\$1,500.00) in full and final settlement and satisfaction of any and all claims asserted by the United States in this action, pursuant to 42 U.S.C. § 12188(b)(2)(B), for monetary damages on behalf of Michael Russo as an aggrieved person. Payment of this amount shall be made within sixty days after the date of entry of the Consent Decree by check payable to the "Michael Russo" and delivered to the United States Attorney's Office for the Southern District of York, 86 Chambers Street, 3rd Floor, New York, New York, 10007.

CERTIFICATION

18. Within six months after the date of entry of this Consent Decree, Defendants shall submit to the Government a certification, signed by defendant Saimovici under penalty of perjury, stating that Defendants have complied with all obligations imposed by this Consent Decree.

RIGHT TO REVIEW COMPLIANCE

19. The Government shall have the rights to review compliance with this Consent Decree. Representatives of the Government shall be permitted to inspect and copy those records of Defendants that Defendants are obligated to preserve pursuant to this Consent Decree at any and all reasonable times, provided, however, that the Government shall endeavor to minimize any inconvenience to the Defendants caused by the inspection of such records. The Government shall have the right to verify compliance with this Consent Decree, including through any means available to the general public.

VIOLATION OF THIS CONSENT DECREE

20. A violation of this Consent Decree shall be deemed a subsequent violation of the ADA under 42 U.S.C. § 12188(b)(3).

RESERVATION OF RIGHTS

21. Nothing contained in this Consent Decree is intended or shall be construed as a waiver by the Government of any right to institute any proceeding or action against Defendants for violations of any statutes, rules or regulations administered by

the Government, or to prevent or limit the rights of the Government to obtain relief under the ADA, or any other federal statutes or regulations, or on account of any violation of this Consent Decree or any other provision of law; provided, however, that subject to Defendants' full compliance with the Consent Decree, the Government shall not file a subsequent complaint against Defendants pursuant to Title III of the ADA concerning the violations of the ADA alleged in the complaint based on facts in existence at the time of the filing of the complaint in this action.

MODIFICATION

22. There shall be no modification of this Consent Decree without the written consent of the Government and the Defendants and the approval of the Court.

ENTIRE AGREEMENT

23. This Consent Decree represents the entire agreement between the Government and Defendants. No prior agreements, oral representations or statements shall be considered part of this Consent Decree.

RETENTION OF JURISDICTION

24. This Court shall retain jurisdiction of this action for a period of three years to enforce or modify the provisions of this Consent Decree, to resolve any dispute that arises under this Consent Decree, and to entertain any application and issue any orders as may be necessary or appropriate for the effectuation of its terms and objectives.

25. The parties shall discuss and attempt to negotiate a resolution of any dispute relating to the interpretation of this Consent Decree before bringing the matter to the Court's attention for resolution.

EXECUTION OF CONSENT DECREE

26. This Consent Decree may be executed in counterparts, each of which shall be an original and shall constitute one and the same instrument.

COSTS AND ATTORNEY'S FEES

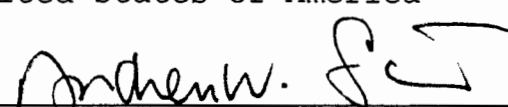
27. Each party shall bear its own costs and attorney's fees in this action.

THE PARTIES HEREBY CONSENT to entry of the foregoing Consent Decree:

FOR THE UNITED STATES:

DAVID N. KELLEY
United States Attorney for the
Southern District of New York
Attorney for Plaintiff
United States of America

By:


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Liviú Bruno Saimovici
LIVIU BRUNO SAIMOVICI, M.D.
750 Park Avenue
New York, New York

JUDGMENT IS HEREBY ENTERED in accordance with the
foregoing Consent Decree.

Dated: New York, New York
8/11, 2005

[Signature]
UNITED STATES DISTRICT JUDGE

[Handwritten mark]